



RECEIVED

DOCKET FILE COPY ORIGINAL

JAN 26 1998

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
--Competitive Bidding For Commercial)	
Broadcast and Instructional Television)	
Fixed Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	
To: The Commission		

COMMENTS OF KENNETH C. HOWARD, JR.

January 26, 1998

Kenneth C. Howard, Jr.
BAKER & HOSTETLER LLP
Suite 1100
1050 Connecticut Avenue NW
Washington, DC 20036
(202) 861-1500

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
--Competitive Bidding For Commercial)	
Broadcast and Instructional Television)	
Fixed Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

To: The Commission

COMMENTS OF KENNETH C. HOWARD, JR.

I am a practicing attorney representing parties with an interest in the auction process described in the above-captioned Notice of Proposed Rule Making ("Notice"). These comments address the implementation of Section 309(l) of the Communications Act of 1934, as amended by the Balanced Budget Act of 1997, 47 U.S.C. § 309(l). In particular, they suggest that the Federal Communications Commission ("Commission") confirm that broadcast applicants who participate in an auction will be relieved from any divestiture commitments made in their original applications.

1. The Notice fails to address whether winners in an auction for new broadcast construction permits would be bound by any divestiture commitments contained in their original applications. Prior to conducting any auctions among applicants

with applications pending since before July 1, 1997, the Commission should clarify that winning bidders may depart from any divestiture commitments that are not required by Commission rule.

2. In light of Congress' determination that the Commission may select permittees through an auction process rather than through a comparison of all mutually exclusive applicants' qualifications, no policy rationale exists for binding an auction-winning applicant to a business decision that was reached when a far different type of selection process was anticipated. Releasing applicants from divestiture commitments would have no adverse effect on the ability of such applicants to offer service.

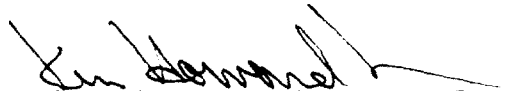
3. Instead, clarifying that applicants will be released from divestiture commitments would further Congress' intentions. Applicants who originally proposed to divest broadcast properties to gain a comparative advantage may rationally be expected to bid higher amounts for the contested construction permits if they will be free to pursue their broadcast opportunities in the local community as they see fit. Thus, revenues from the auction would be maximized by a Commission clarification, prior to the auction, that an applicant need not adhere to prior divestiture commitments should its bid succeed in winning the permit.

4. Past precedent wholly supports adoption of this approach. The Commission has routinely permitted applicants to avoid divestiture commitments as part of global settlements so

long as the settlement occurred early in the hearing process. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, Report and Order in General Docket No. 90-264, 6 F.C.C. Rcd 157, 160 at ¶ 21 (1990), modified, 6 F.C.C. Rcd 3403 at ¶¶ 5-6 (1991). The Commission recently took a similar position with respect to such divestiture commitments where parties were able to reach a settlement within the Section 309(1)(3) settlement period. See Notice at ¶ 26.

5. Accordingly, the Commission should announce, prior to conducting any auction, that applicants with pending applications who win a broadcast construction permit through competitive bidding need not comply with any divestiture commitments not required by rule. Any other decision will fail to maximize participation in the auction, will cause unnecessary uncertainty for applicants, and will lead to unfair, as well as legally untenable, results.

Respectfully Submitted,



Kenneth C. Howard, Jr.
BAKER & HOSTETLER LLP
Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036-5304
(202) 861-1500

January 26, 1998

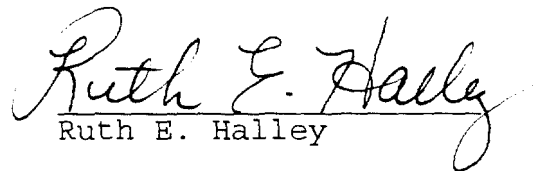
CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Comments of Kenneth C. Howard, Jr." were hand-delivered on this 26th day of January, 1998 to the following:

Mass Media Bureau
Video Services Division
Federal Communications Commission
Room 702
1919 M Street, N.W.
Washington, D.C. 20554

Mass Media Bureau
Audio Service Division
Federal Communications Commission
Room 302
1919 M Street, N.W.
Washington, D.C. 20554

Office of General Counsel
Federal Communications Commission
Room 610
1919 M Street, N.W.
Washington, D.C. 20554


Ruth E. Halley